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REMEDIES

CASES AND MATERIALS

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July, 1987



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PREFACE

Our objective in compiling this volume has been to provide a collection of cases and other materials which could form the basis of a law school course on the law relating to Remedies. For a number of years, all of us have been teaching the course using our own materials or those based on the work of others such as that of the late Arthur Foote, John Yogis and Grant Hammond at Dalhousie. Our experience in doing that suggested that there might be considerable gains to be made in a collaborative, published effort. We trust that optimism is vindicated.

This, it should be emphasised again, is primarily a set of teaching materials. Though it contains considerable textual material, it was never intended to be a text on the law of Remedies. Not only do good standard texts abound on various aspects of this subject in American, British and even Australian literature but there are also now excellent indigenous works which will be of tremendous value to your students. In this regard, we as co-ordinating editors have no hesitation at pointing to the works of two of our co-authors, Robert Sharpe, Injunctions and Specific Performance (Toronto: Canada Law Book Co., 1983) and Stephen Waddams, The Law of Damages (Toronto: Canada Law Book Co., 1983) and on personal injury damages Ken Cooper-Stephenson and Iwan B. Saunders, Personal Injury Damages in Canada (Toronto: Carswell, 1981) is recommended highly.

As well as not being a text, neither does this work attempt to provide any systematic, philosophical or policy overview with respect to the law of Remedies. Once again, such materials are included but we leave it to teachers and students to work towards a coherent concept of a desirable system of remedies.

We should also add to our list of omissions our quite deliberate decision not to cover comprehensively the law relating to restitution or unjust enrichment. Of course, we do recognize that this does form an important part of the mosaic of our common law system of Remedies but we also recognize the fact that restitutionary remedies form a separate course at a significant number of Canadian law schools. Given that and given what is already a long book, we came early to the conclusion that the law of unjust enrichment would not be covered in any depth. We do, however, have one chapter devoted to the topic of awards measured by the worth of the benefit conferred.

In fact, even at the present length, we realise that it may be too long for some tastes. Nevertheless, we did feel that it was important to cover all of the subject areas which in our collective experience we have taught as part of the law of Remedies leaving open the possibility for considerable choice from among the materials included. Indeed, at least two of us confine our coverage of remedies to the area of equitable remedies, this because of the extent to which remedial issues are

covered in the first year courses of the Law School in question. Other consumers of the product may be in the same position and the book is designed to facilitate such selective coverage. Indeed, because of this, there is some overlap of material as between Chapter 1.IV ("Time of Assessment") and Chapter 9.V ("Equitable Damages").

In terms of responsibility for the work, we at Queen's have been co-ordinating editors of the various contributions and primarily answer for the extent to which it all fits together. As for its various parts, Tom Cromwell was primarily responsible for the material on the general principles of damages as well as the section on damages to property interests while Stephen Waddams covered damages for breach of contract and Jeffrey Berryman the subject of damages for personal injury or death. On the equitable side, Jamie Cassels provided the section on injunctions except interlocutory injunctions which were the responsibility of Jeffrey Berryman. Robert Sharpe edited the material on Charter Remedies. Finally, we prepared the section on specific performance including injunctions for breach of contract.

A number of acknowledgments are in order: first, to Paul Emond of Emond-Montgomery Publications for his ever-genial tolerance of our foibles and not inconsiderable delays in producing a manuscript as well as his financial contribution to our employment of research assistants; secondly to our research

assistants Carole Lucock and Ross Macnab for their very significant involvement and willingness to perform those vital tasks which are nevertheless pure drudgery; and thirdly to Phyllis Reid and Trudy Hartley for their invaluable secretarial assistance. We also recognize with gratitude the consents given by authors and publishers to the inclusion of already-published material as part of this collection.

David Mullan
Stanley Sadinsky

Queen's University
July, 1987

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